

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES BURNS,

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of  
Social Security,

Defendant.

Case No. 2:20-cv-1182-JDP

ORDER

Plaintiff's counsel seeks an award of attorney fees under 42 U.S.C. § 406(b). ECF No. 28. Plaintiff entered into a contingent fee agreement that provided that he would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 28-3 at 1. After this court remanded for further proceedings, plaintiff was found disabled and awarded past-due benefits. ECF Nos. 24 & 28-2 at 1. The Social Security Administration withheld \$31,691.75, which was twenty-five percent of plaintiff's past due benefits, to pay his attorney. *Id.* Plaintiff's counsel requests \$16,000.00, which is the statutory maximum, and which would work out to an hourly rate of \$388.25.

An attorney is entitled to reasonable fees for successfully representing social security claimants in district court.

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment

1 a reasonable fee for such representation, not in excess of 25 percent  
 2 of the total of the past-due benefits to which the claimant is entitled  
 3 by reason of such judgment.

4 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section 406(b)  
 5 are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586 F.3d 1142,  
 6 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802). The twenty-five percent  
 7 statutory maximum fee is not an automatic entitlement; the court must ensure that the requested  
 8 fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that § 406(b) does not displace  
 9 contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review  
 10 for reasonableness fees yielded by those agreements.”). In assessing whether a fee is reasonable,  
 11 the court should consider “the character of the representation and the results the representative  
 12 achieved.” *Id.* at 808. A “court may properly reduce the fee for substandard performance, delay,  
 13 or benefits that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

14 The court finds that the requested fees are reasonable. Counsel’s billing records reflect a  
 15 total of 41.20 hours of attorney time on this case. ECF No. 28-4 at 1-2. Counsel’s request for  
 16 \$16,000.00, which is less than the statutory maximum, would constitute an hourly rate of  
 17 approximately \$388.25 for attorney services. Counsel did not engage in dilatory conduct or  
 18 perform in a substandard manner. Indeed, counsel’s representation resulted in this matter being  
 19 remanded for further proceedings, which resulted in a favorable decision and an award of  
 20 benefits. *See* ECF Nos. 24 & 28-2. Given counsel’s experience, the result obtained in this case,  
 21 and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. *See, e.g.*,  
 22 *De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at effective  
 23 hourly range of \$1,116.26); *Jamieson v. Astrue*, 2011 WL 587096 (E.D. Cal. Feb. 9, 2011)  
 24 (finding fees at effective hourly rate of \$1,169.49 reasonable); 2016 WL 4248557 (S.D. Cal. Aug.  
 25 11, 2016) (awarding fees at effective hourly rate of \$1,063); *Palos v. Colvin*, 2016 WL 5110243  
 26 (C.D. Cal. Sept. 20, 2016) (finding fees at effective hourly rate of \$1,546.39 reasonable).

27 Counsel concedes that the \$8,200 award should be offset by the fees previously awarded  
 28 under the under the Equal Access to Justice Act (“EAJA”). ECF No. 28 at 3; *see* ECF No. 27.

1 She also indicates that she will reimburse plaintiff the amount previously awarded under the  
2 EAJA. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney's fees  
3 are awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two  
4 awards to the plaintiff).

5 Accordingly, it is hereby ORDERED that:

6 1. The motion for attorney fees, ECF No. 28, is granted.  
7 2. Plaintiff's counsel is awarded \$16,000.00 in fees pursuant to 42 U.S.C. § 406(b).  
8 3. Upon receipt of the \$16,000.00 award, counsel shall refund to plaintiff the sum of  
9 \$8,200.00 previously awarded under the EAJA.

10 IT IS SO ORDERED.  
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12 Dated: November 21, 2024

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14 JEREMY D. PETERSON  
15 UNITED STATES MAGISTRATE JUDGE  
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